

Members

Rep. Jerry Denbo, Chairperson  
Rep. Win Moses  
Sen. Luke Kenley  
Sen. Teresa Lubbers  
Sen. Lindel Hume  
Sen. Richard Young  
Rep. Michael Murphy  
Rep. John Ulmer



## ADMINISTRATIVE RULES OVERSIGHT COMMITTEE

LSA Staff:

George T. Angelone, Attorney for the Committee  
Mark Bucherl, Fiscal Analyst for the Committee

Authority: IC 2-5-18

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### MEETING MINUTES<sup>1</sup>

Meeting Date: September 13, 1999  
Meeting Time: 10:00 A.M.  
Meeting Place: State House, 200 W. Washington  
St., Room 431  
Meeting City: Indianapolis, Indiana  
Meeting Number: 1

**Members Present:** Rep. Jerry Denbo, Chairperson; Rep. Win Moses; Sen. Luke Kenley; Sen. Teresa Lubbers; Sen. Lindel Hume; Sen. Richard Young.

**Members Absent:** Rep. Michael Murphy; Rep. John Ulmer.

Chairman Denbo called the meeting to order. George Angelone, Attorney for the Committee, indicated that the following study topic has been assigned to the Committee by the Legislative Council:

Study the feasibility of delaying the effective dates and suspending the operation of administrative rules in order to permit the General Assembly to have a reasonable opportunity to review each rule or emergency rule

(A summary of his presentation and a copy of SB 129 (1999), identified as Exhibit 1, is available from the Legislative Information Center.)

Senator Kenley indicated that in 1998 the Family and Social Services Evaluation

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Committee considered PD 3394, which would have delayed the effective date of all adopted rules until the completion of at least one Session of the General Assembly. The Committee made no final recommendation concerning the draft. In the absence of action by the Committee, Senator Pat Miller introduced SB 129, which would have required the Administrative Rules Oversight Committee to review all proposed rules.

Karen Davis, General Counsel for the Family and Social Services Administration, summarized the four to six month process that is required to adopt an administrative rule. She suggested that the current process has numerous safeguards to protect the public from the adoption of rules that violate state law. Kathy Gifford, Assistant Secretary for Medicaid in the Office of Medicaid Policy and Planning, suggested that the introduction of a legislative procedure to suspend rules may reduce the State's ability to change its programs in a timely way to take advantage of available federal funds, slow the ability of an agency to make rulemaking amendments that benefit the public, and interfere with the ability of the public to determine, with certainty, when to do what is needed to comply with the requirements in an adopted rule. Kristina Wheeler, Assistant General Counsel for the Indiana Utility Regulatory Commission, also observed that the current rulemaking process provides ample opportunity to balance the competing concerns of the public. She suggested that, given the number of highly technical and diverse topics on which rules are adopted, the General Assembly may find it burdensome to evaluate all rules. William Divine, Office of Legal Counsel, Indiana Department of Environmental Management, concurred that there are numerous safeguards in current law to ensure that an agency's rules are consistent with the intent of the General Assembly. He noted that the Indiana Department of Environmental Management is subject to rulemaking procedures that involve multiple public hearings and require eighteen months to complete.

Edward O. Roberts, Jr., Indiana Manufacturers Association, discussed the need for a legislative opportunity to review rules prior to their initial implementation. He suggested that advance review of rules is needed to avoid the harm that a rule can cause to an industry or other class of citizens before a legislative response can be worked out. He noted that full review by the Indiana General Assembly is needed because the state constitution prohibits the General Assembly from delegating its law making functions to a legislative committee. Mark Scherer, General Counsel for the Indiana Health Care Association, shared the experience of the Indiana Health Care Association with the adoption of a rule to govern case mix reimbursement of nursing homes. He indicated that, absent a mechanism to suspend the operation of a rule pending the enactment of a suitable legislative solution, the Association was required to take legal action to resolve the matter. The process resulted in substantial legal expenses for both the State of Indiana and the Association.

Chairman Denbo indicated that the Committee would consider this matter further at its next meeting.

George Angelone, Attorney for the Committee, described a Complaint that had been filed with the Committee by Bonnie Janiszewski. He indicated that she had alleged that current laws, including the administrative rules adopted by IOSHA are inadequate to protect the safety of workers. (A summary of Mr. Angelone's remarks, labeled as Exhibit 2, is available from the Legislative Information Center.) Chairman Denbo indicated that he wanted Mr. Angelone to provide information on what rules IOSHA has adopted to regulate the subject of the Complaint. He deferred further action on the Complaint until Mr. Angelone's report could be heard by the Committee.

The Committee set the next meeting for October 6, 1999 at 10:30 a.m. The Committee will meet in Room 404. Chairman Denbo then adjourned the meeting.